

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Alexandria Division

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| UNITED STATES OF AMERICA, | : | |
| | : | |
| v. | : | Criminal Case No. 1:18-CR-457 (AJT) |
| | : | |
| BIJAN RAFIEKIAN, et al. | : | |

**DEFENDANT RAFIEKIAN’S MOTION FOR LEAVE TO FILE SUR-REPLY TO
GOVERNMENT’S MEMORANDUM REGARDING CRIME-FRAUD EXCEPTION
TO THE WORK PRODUCT DOCTRINE**

Defendant Rafiekian, through counsel, respectfully seeks leave of the Court to file the attached sur-reply in order to correct several inaccurate statements of law and address important issues raised for the first time in the Government’s Memorandum Regarding the Crime-Fraud Exception to the Work Product Doctrine (“Reply”).

The defense files this motion pursuant to Local Criminal Rule 47(F) and seeks a fair opportunity to respond to the new cases and issues addressed in the government’s memorandum. *See Collins v. Dollar Tree Stores, Inc.*, No. 2:09-CV-486, 2010 WL 9499078, at *1 (E.D. Va. May 28, 2010) (granting motion for leave to file a sur-reply purporting to correct inaccurate statements contained in opposing party’s reply motion). The decision to grant or deny leave to file a sur-reply is committed to the sound discretion of the court, and a court may grant leave to file a sur-reply when the moving party has “raised new arguments or brought forth new material in its reply brief.” *See Gibbs v. Plain Green, LLC*, No. 3:17-CV-495, 2017 WL 7693141, at *1 (E.D. Va. Oct. 31, 2017). The government’s Reply raises two important issues for the first time: (1) whether the documents and information at issue were prepared in anticipation of litigation, and (2) whether a defendant who committed a crime or fraud may invoke work product

protection. As discussed in the accompanying sur-reply, the government misstates the law on both points.

Accordingly, Mr. Rafiekian requests that the Court accept a brief sur-reply of points and authorities for this purpose.

Dated: June 26, 2019

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that, on the 26th day of June 2019, true and genuine copies of Defendant Bijan Rafiekian's Motion for Leave to File Sur-Reply to Government's Memorandum Regarding the Crime-Fraud Exception to the Work Product Doctrine was sent via electronic mail by the Court's CM/ECF system to the following:

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